IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6561 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYESH V DAVE

Versus

STATE OF GUJARAT

Appearance:

MR SV RAJU for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 17/07/2000

ORAL JUDGEMENT

Rule. Learned A.P.P. Mr. S.S. Patel waives service of rule on behalf of the respondent no.1-State.. The respondent no.2 though served with show cause notice issued vide earlier order dated 3-11-1999 has failed to appear.

1. The petitioner has prayed to quash and set aside Criminal Case no.2027/98 pending in the Court of Metropolitan Magistrate, Ahmedabad, Court no.2, qua the present petitioner.

2. The respondent no.2-M/s. Kothari Paper Products Pvt. Ltd. has filed Criminal Case no.2027/98 in the Court of learned Metropolitan Magistrate, Ahmedabad, Court no.2, against M/s. Vardev Overseas Ltd.and seven others, in respect to offences made punishable under Sec.138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "Act"). The present petitioner-Jayesh V. Dave is shown as the accused no.4 in the certified copy of criminal complaint produced at Annexure "A".

3. According to the complainant M/s. Kothari Paper Products Pvt.Ltd. a cheque dated 9-7-1998 drawn on Visnagar Nagarik Sarkari Bank Ltd. Usmanpura Branch bearing no.475348 for Rs.1,50,696/- was issued in favour of the complainant by the accused in respect to payment of the goods purchased vide Bill no.133 dated 27-6-1998. According to the complainant, the said cheque when presented through his banker has returned dishonoured with the endorsement of "insufficient funds" on 11-7-1998. That thereby, demand notice dated 14-7-1998 was sent by R.P.A.D. to the accused and the complaint was filed.
That the complaint appears to have been lodged on 24-8-1998. The learned Metropolitan Magistrate, Court no.2, Ahmedabad, having recorded the verification has issued summons for the offence under Section 138 of the Act against the accused. That original accused no.4Jayesh V. Dave (present petitioner) has challenged issuance of said process in the present proceedings.

4. Learned Advocate Mr. S.V. Raju appearing for the petitioner has taken me through the complaint, certified copy of which is produced at Annexure "A" and has urged that neither in the body of the complaint nor in the title cause, the complainant has disclosed the fact regarding management of the affairs of the accused no.1-Company-M/s. Vardev Overseas Ltd. That the present petitioner has been impleaded as the accused no.4 describing him as a Chartered Accountant. It is urged

that in the absence of any material averment of fact in the complaint, the present petitioner being a professional Director of M/s. Vardev Overseas Ltd., the accused no.4-(petitioner) is entitled to claim the benefit of proviso to Sec.141 of the Act.

5. It is pertinent to note that despite due service of notice vide earlier order dated 3-11-1999, the respondent no.2 has failed to appear and has failed to file any affidavit-in-reply to controvert the averments made in the petition. The petitioner has stated on oath that the petitioner has been rendering professional service to the accused no.1-Company and has neither been in charge of the affairs of the said Company nor has he drawn the said disputed cheque in favour of the petitioner, and as such, he has no knowledge about the said transaction for which complaint is filed.

6. In view of the above stated facts and circumstances, the complaint filed by the respondent no.2 does not disclose any offence qua the present petitioner, and as such, deserves to be quashed and set aside under Sec.482 of the Code of Criminal Procedure.

7. As a result of the aforesaid discussion, the petition is allowed. The complaint registered vide Criminal Case no.2027/98 in the Court of Ahmedabad Metropolitan Magistrate, Court no.2 qua the accused no.4 alongwith the order dated 24-8-1998 issuing summons against the present petitioner(the accused no.4) for the offences made punishable under Sec.138 of the Negotiable Instruments Act are hereby quashed and set aside. Rule is made absolute accordingly.

(A.K.Trivedi,J.)

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